

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

**METAL JEANS, INC., a Nevada
Corporation,**

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendant.

Case No. 2:15-cv-02127-DDP(PJWx)

**STIPULATED PROTECTIVE
ORDER**

Judge: Dean D. Pregerson
Courtroom: 3
Action filed: February 3, 2015
Trial Date: December 13, 2016
Mag. Judge: Patrick J. Walsh

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles. The parties further acknowledge, as set forth
3 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
4 file confidential information under seal; Civil Local Rule 79-5 sets forth the
5 procedures that must be followed and the standards that will be applied when a
6 party seeks permission from the court to file material under seal.

7 B. GOOD CAUSE STATEMENT

8 Defendant State of California, acting by and through the California Highway
9 Patrol, (State) may be producing reports obtained from the California Law
10 Enforcement Telecommunications System (CLETS), which reports are generally
11 unavailable to the public. The disclosure of this information to the public may
12 jeopardize the security of CLETS, the effectiveness of law enforcement efforts that
13 rely on CLETS, and the safety of law enforcement officers using CLETS. In
14 addition, defendant State may be producing documents concerning its confidential
15 internal policies, which documents are generally unavailable to the public. The
16 disclosure of this information may jeopardize the security of the State's operations,
17 and jeopardize the safety of California Highway Patrol officers. The State may also
18 be producing documents that contain personal and confidential information
19 regarding individuals which information is generally unavailable to the public. The
20 disclosure of this information to the public may violate those individuals' privacy
21 rights.

22 Accordingly, to expedite the flow of information, to facilitate the prompt
23 resolution of disputes over confidentiality of discovery materials, to adequately
24 protect information the parties are entitled to keep confidential, to ensure that the
25 parties are permitted reasonable necessary uses of such material in preparation for
26 and in the conduct of trial, to address their handling at the end of the litigation, and
27 serve the ends of justice, a protective order for such information is justified in this
28 matter. It is the intent of the parties that information will not be designated as

1 confidential for tactical reasons and that nothing be so designated without a good
2 faith belief that it has been maintained in a confidential, non-public manner, and
3 there is good cause why it should not be part of the public record of this case.

4 5 2. DEFINITIONS

6 2.1 Action: *Metal Jeans, Inc. v. State of California, et al.*, United States
7 District Court for the Central District of California case number 2:15-cv-02127-
8 DDP(PJWx).

9 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
10 information or items under this Order.

11 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
12 it is generated, stored or maintained) or tangible things that qualify for protection
13 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
14 Cause Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
16 support staff)

17 2.5 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 2.6 Disclosure or Discovery Material: all items or information, regardless of
21 the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced
23 or generated in disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as
26 an expert witness or as a consultant in this Action.

27 2.8 House Counsel: attorneys who are employees of a party to this Action.
28 House Counsel does not include Outside Counsel of Record or any other outside

1 counsel.

2 2.9 Non-Party: any natural person, partnership, corporation, association, or
3 other legal entity not named as a Party to this action.

4 2.10 Outside Counsel of Record: attorneys who are not employees of a party
5 to this Action but are retained to represent or advise a party to this Action and have
6 appeared in this Action on behalf of that party or are affiliated with a law firm
7 which has appeared on behalf of that party, and includes support staff.

8 2.11 Party: any party to this Action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this Action.

13 2.13 Professional Vendors: persons or entities that provide litigation support
14 services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)
16 and their employees and subcontractors.

17 2.14 Protected Material: any Disclosure or Discovery Material that is
18 designated as "CONFIDENTIAL."

19 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21
22 **3. SCOPE**

23 The protections conferred by this Stipulation and Order cover not only
24 Protected Material (as defined above), but also (1) any information copied or
25 extracted from Protected Material; (2) all copies, excerpts, summaries, or
26 compilations of Protected Material; and (3) any testimony, conversations, or
27 presentations by Parties or their Counsel that might reveal Protected Material.

28 Any use of Protected Material at trial shall be governed by the orders of the

1 trial judge. This Order does not govern the use of Protected Material at trial.

2 4. DURATION

3 Even after final disposition of this litigation, the confidentiality obligations
4 imposed by this Order shall remain in effect until a Designating Party agrees
5 otherwise in writing or a court order otherwise directs. Final disposition shall be
6 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
7 with or without prejudice; and (2) final judgment herein after the completion and
8 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
9 including the time limits for filing any motions or applications for extension of time
10 pursuant to applicable law.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or Non-Party that designates information or items for protection
14 under this Order must take care to limit any such designation to specific material
15 that qualifies under the appropriate standards. The Designating Party must
16 designate for protection only those parts of material, documents, items, or oral or
17 written communications that qualify so that other portions of the material,
18 documents items, or communications for which protection is not warranted are not
19 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or
20 routinized designations are prohibited. Designations that are shown to be clearly
21 unjustified or that have been made for an improper purpose (e.g., to unnecessarily
22 encumber the case development process or to impose unnecessary expenses and
23 burdens on other parties) may expose the Designating Party to sanctions.

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this

1 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
2 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
3 under this Order must be clearly so designated before the material is disclosed or
4 produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents,
7 but excluding transcripts of depositions or other pretrial or trial proceedings), that
8 the Producing Party affix at a minimum, the legend “CONFIDENTIAL”
9 (hereinafter “CONFIDENTIAL legend”), to each page that contains protected
10 material. If only a portion or portions of the material on a page qualifies for
11 protection, the Producing Party also must clearly identify the protected portion(s)
12 (e.g., by making appropriate markings in the margins).

13 A Party or Non-Party that makes original documents available for inspection
14 need not designate them for protection until after the inspecting Party has indicated
15 which documents it would like copied and produced. During the inspection and
16 before the designation, all of the material made available for inspection shall be
17 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
18 documents it wants copied and produced, the Producing Party must determine
19 which documents, or portions thereof, qualify for protection under this Order. Then,
20 before producing the specified documents, the Producing Party must affix the
21 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
22 portion or portions of the material on a page qualifies for protection, the Producing
23 Party also must clearly identify the protected portion(s) (e.g., by making
24 appropriate markings in the margins).

25 (b) for testimony given in depositions that the Designating Party identify the
26 Disclosure or Discovery Material on the record, before the close of the deposition
27 all protected testimony.

28 (c) for information produced in some form other than documentary and for any

1 other tangible items, that the Producing Party affix in a prominent place on the
2 exterior of the container or containers in which the information is stored the legend
3 “CONFIDENTIAL.” If only a portion or portions of the information warrants
4 protection, the Producing Party, to the extent practicable, shall identify the
5 protected portion(s).

6 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
7 failure to designate qualified information or items does not, standing alone, waive
8 the Designating Party’s right to secure protection under this Order for such
9 material.

10 Upon timely correction of a designation, the Receiving Party must make
11 reasonable efforts to assure that the material is treated in accordance with the
12 provisions of this Order.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court’s
16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
18 resolution process under Local Rule 37.1 et seq.

19 6.3 The burden of persuasion in any such challenge proceeding shall be on the
20 Designating Party. Frivolous challenges, and those made for an improper purpose
21 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
22 expose the Challenging Party to sanctions. Unless the Designating Party has
23 waived or withdrawn the confidentiality designation, all parties shall continue to
24 afford the material in question the level of protection to which it is entitled under
25 the Producing Party’s designation until the Court rules on the challenge.

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

1 7.1 Basic Principles. A Receiving Party may use Protected Material that is
2 disclosed or produced by another Party or by a Non-Party in connection with this
3 Action only for prosecuting, defending, or attempting to settle this Action. Such
4 Protected Material may be disclosed only to the categories of persons and under the
5 conditions described in this Order. When the Action has been terminated, a
6 Receiving Party must comply with the provisions of section 13 below (FINAL
7 DISPOSITION).

8 Protected Material must be stored and maintained by a Receiving Party at a
9 location and in a secure manner that ensures that access is limited to the persons
10 authorized under this Order.

11 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
12 ordered by the court or permitted in writing by the Designating Party, a Receiving
13 Party may disclose any information or item designated “CONFIDENTIAL” only to:

- 14 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
15 employees of said Outside Counsel of Record to whom it is reasonably
16 necessary to disclose the information for this Action;
- 17 (b) the officers, directors, and employees (including House Counsel) of the
18 Receiving Party to whom disclosure is reasonably necessary for this Action;
- 19 (c) Experts (as defined in this Order) of the Receiving Party to whom
20 disclosure is reasonably necessary for this Action and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 22 (d) the court and its personnel;
- 23 (e) court reporters and their staff;
- 24 (f) professional jury or trial consultants, mock jurors, and Professional
25 Vendors to whom disclosure is reasonably necessary for this Action and who have
26 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 27 (g) the author or recipient of a document containing the information or a
28 custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the

1 subpoena or order issued, unless the Party has obtained the Designating Party's
2 permission. The Designating Party shall bear the burden and expense of seeking
3 protection in that court of its confidential material and nothing in these provisions
4 should be construed as authorizing or encouraging a Receiving Party in this Action
5 to disobey a lawful directive from another court.

6
7 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
8 **IN THIS LITIGATION**

9 (a) The terms of this Order are applicable to information produced by a Non-
10 Party in this Action and designated as "CONFIDENTIAL." Such information
11 produced by Non-Parties in connection with this litigation is protected by the
12 remedies and relief provided by this Order. Nothing in these provisions
13 should be construed as prohibiting a Non-Party from seeking additional
14 protections.

15 (b) In the event that a Party is required, by a valid discovery request, to
16 produce a Non-Party's confidential information in its possession, and the Party
17 is subject to an agreement with the Non-Party not to produce the Non-Party's
18 confidential information, then the Party shall: (1) promptly notify in writing
19 the Requesting Party and the Non-Party that some or all of the information
20 requested is subject to a confidentiality agreement with a Non-Party; (2)
21 promptly provide the Non-Party with a copy of the Stipulated Protective Order
22 in this Action, the relevant discovery request(s), and a reasonably specific
23 description of the information requested; and
24 (3) make the information requested available for inspection by the Non-Party,
25 if requested.

26 (c) If the Non-Party fails to seek a protective order from this court within 14
27 days of receiving the notice and accompanying information, the Receiving
28 Party may produce the Non-Party's confidential information responsive to the

1 discovery request. If the Non-Party timely seeks a protective order, the
2 Receiving Party shall not produce any information in its possession or control
3 that is subject to the confidentiality agreement with the Non-Party before a
4 determination by the court. Absent a court order to the contrary, the Non-
5 Party shall bear the burden and expense of seeking protection in this court of
6 its protected Material.

7 8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
10 Protected Material to any person or in any circumstance not authorized under this
11 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
12 writing the Designating Party of the unauthorized disclosures, (b) use its best
13 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
14 person or persons to whom unauthorized disclosures were made of all the terms of
15 this Order, and (d) request such person or persons to execute the “Acknowledgment
16 and Agreement to Be Bound” that is attached hereto as Exhibit A.

17 18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 19 PROTECTED MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other
22 protection, the obligations of the Receiving Parties are those set forth in Federal
23 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
24 whatever procedure may be established in an e-discovery order that provides for
25 production without prior privilege review. Pursuant to Federal Rule of Evidence
26 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
27 of a communication or information covered by the attorney-client privilege or work
28

1 product protection, the parties may incorporate their agreement in the stipulated
2 protective order submitted to the court.

3 4 12. MISCELLANEOUS

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order no Party waives any right it otherwise would have to object to
9 disclosing or producing any information or item on any ground not addressed in
10 this Stipulated Protective Order. Similarly, no Party waives any right to object on
11 any ground to use in evidence of any of the material covered by this Protective
12 Order.

13 12.3 Filing Protected Material. A Party that seeks to file under seal any
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material
15 may only be filed under seal pursuant to a court order authorizing the sealing of the
16 specific Protected Material at issue. If a Party's request to file Protected Material
17 under seal is denied by the court, then the Receiving Party may file the information
18 in the public record unless otherwise instructed by the court.

19 20 13. FINAL DISPOSITION

21 After the final disposition of this Action, as defined in paragraph 4, within 60
22 days of a written request by the Designating Party, each Receiving Party must
23 return all Protected Material to the Producing Party or destroy such material. As
24 used in this subdivision, "all Protected Material" includes all copies, abstracts,
25 compilations, summaries, and any other format reproducing or capturing any of the
26 Protected Material. Whether the Protected Material is returned or destroyed, the
27 Receiving Party must submit a written certification to the Producing Party (and, if
28 not the same person or entity, to the Designating Party) by the 60 day deadline that

(1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED _____

LAW OFFICES OF OVERLAND & OVERLAND
MARK E. OVERLAND (SBN 38375)
COURTNEY OVERLAND (SBN 289666)

Attorneys for Plaintiff Metal Jeans, Inc.

DATED: _____

KAMALA D. HARRIS, Attorney General of California
JOEL A. DAVIS, Supervising Deputy Attorney General
BENJAMIN BARNOUW, Deputy Attorney General

*Attorneys for Defendants State of California,
acting by and through the California Highway
Patrol, California Highway Patrol Officer Jon Relles,
and California Highway Patrol Officer Todd Barrett*

DATED: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LAW, BRANDMEYER PACKER LLP
YUK LAW
SHAINA KINSBERG

Attorneys for Defendant Howard Sommers Towing, Inc.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: January 13, 2016



PATRICK J. WALSH
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address],

declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Metal Jeans, Inc. v. State of California, et al.*, case number 2:15-cv-02127-DDP(PJWx). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____
 City and State where sworn